

July 10, 1997

MEMORANDUM TO: Distribution

FROM: Michael J. Rubino, Associate Director
Acquisition Services Branch

SUBJECT: Policy Memorandum No. 97-009, Advance Payments
to FDIC Contractors

1. Purpose. The purpose of Policy Memorandum No. 97-009 is to (1) consolidate changes made under Policy Memoranda 97-001 and 97-004 and (2) make additional revisions to the policies and procedures stated in the Acquisition Policy Manual (APM), Section 8.I., concerning advance payments to FDIC contractors.
2. References.
 - a. APM 8.I., *Advance Payments to FDIC Contractors*, page 8-37
 - b. Policy Memorandum 97-001, dated February 4, 1997
 - c. Policy Memorandum No. 97-004, dated March 17, 1997
3. Scope. This Policy Memorandum supplements the policies and procedures stated in the APM and is applicable to all Contracting Officers and Acquisition Services Branch (ASB) personnel involved in developing and issuing solicitations and awarding contracts that allow advance payments to FDIC contractors.
4. Superseded Policy/Consolidation. The policies and procedures stated in APM 8.I. dealing with approving advance payments to contractors under FDIC contracts was modified on two previous occasions (see references b. and c. above). In order to consolidate these changes with new changes to APM 8.I., this Policy Memorandum supersedes Policy Memoranda Nos. 97-001 and 97-004.
5. Background.

Contractors are required to provide all resources necessary for performance under FDIC contracts. However, advance payments may be used when authorized under APM 8.I., page 8-37. Policy Memorandum No. 97-001 established that the amount of an approved advance is a not-to-exceed amount that could be replenished as necessary without further approvals. Policy Memorandum No. 97-004 established the authority to name a designee for the purpose of approving the use of advances at the field office level. In addition to these previous revisions, further revisions are now necessary dealing with the advance payment threshold and emergency operational and non-recurring conditions under property management contracts.

6. APM Change. Therefore, this Policy Memorandum consolidates and supercedes Policy Memoranda 97-001 and 97-004 and makes further revisions to the APM as follows:

- a. APM 8.I.4., *Authorization*, is deleted in its entirety and is restated as follows:

“8.I.4. Authorization.

8.I.4.a. **Approval.** Advance payments shall not be provided to a FDIC Contractor unless authorized in accordance with this section. If a Program Office considers advance payments to be necessary for contractor performance, the request shall be in writing and approved by the Division Director or **designee(s)** when the advance is greater than \$50,000 or by the senior executive in a given Division or Office in the Field or **designee(s)** when the advance is \$50,000 or less. Field designees shall not be made lower than two levels from the senior executive-level. Approval must be provided to the Contracting Officer prior to issuance of the Request for Proposal.

8.I.4.b. **Availability.** The availability of advances will be set forth in the solicitation and will be provided in accordance with the terms of the contract.

8.I.4.c. **Limitations.** Advances may be approved when the contract is competitively awarded and the **advance will not exceed 25% of the base year contract price**, exclusive of option year prices. The advance may be replenished by FDIC on a monthly basis as the contractor applies the funding to properly incurred contractual expenses. This replenishment does not require the approval for advances as stipulated in this section. Expenditure authority must be obtained for the contract’s aggregate amount, including any advanced amounts, from the appropriate corporate official(s) in accordance with the Expenditure Delegations.”

8.I.4.d. **Emergency Advance Payments for Property Management Requirements.** Under property management contracts and task orders, special situations or circumstances may occur that put FDIC properties at risk or create emergencies that require immediate attention. For purposes of this provision, emergencies are defined as any situation, circumstance or special occurrence that threatens the safety or soundness of an FDIC property and/or its occupants, has the potential for significantly undermining FDIC’s equity in the property (i.e., anticipated code violations, utility liens, condemnation orders), or creates a potential liability.

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When emergencies arise (as specified herein), the Regional Director or designee(s) may approve an advance payment(s) for the direct purpose of addressing or correcting the situation. Emergency advance payment(s) shall be approved in accordance with the Expenditure Delegations. The amount of the emergency payment(s) shall not be applied against the 25% limitation stated in 8.I.4.c. above.

- b. APM 8.I.6., *Security for Advance Payments*, is deleted in its entirety and restated as follows:

“8.I.6. Security for Advance Payments. The contractor shall provide security for the advance payment(s) in the form of an irrevocable letter of credit and must be in the amount equal to the advance. However, when an advance payment is deposited into an operating account at a financial institution by FDIC’s Division of Finance and FDIC is named as a party to that account, then the contractor is not required to provide security for the advance. The jointly established bank account gives FDIC access to the advanced funds in case the contractor goes out of business or their contract is terminated. Notwithstanding, **the Contracting Officer shall ensure that all contracts that provide advance payments include fidelity bond insurance coverage to protect FDIC from losses arising from theft, embezzlement, fraud, or misplacement of funds. (See APM 3.I.4.b.)**”

- c. APM 8.I.7.b., *Advance Payments Deposits*, is deleted in its entirety and restated as follows:

“8.I.7.b. Advance Payments Deposits. The Contracting Officer shall ensure that the terms and conditions associated with providing advance payments to contractors are fully documented in all awarded contracts.”

7. Effective Date. This Policy Memorandum is effective immediately.
8. Contacts. If you have any questions regarding this Policy Memorandum, please call David McDermott on (202) 942-3434.

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